

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
January 31, 2005
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

Presiding Officer Barry Johnston called the meeting to order at 10:17 a.m. Other Board members present were Greg Cross, Roger Noble, Dan Manson, Shaun Peterson, and Frank Schumacher. Board Attorney Paul Johnson and Executive Director Terry Wadsworth were also present. Terry Cosgrove was absent.

Approval of Minutes

Presiding Officer Johnston noted there was an error in the last paragraph on page one of the minutes of the December 6, 2004 meeting. The error was corrected. Mr. Schumacher moved to approve the minutes with the necessary change. Mr. Peterson seconded the motion. **The motion was unanimously approved.**

Approval of Actions taken in Executive Session

Presiding Officer Johnston introduced the matter of the settlement discussed in Executive Session. Mr. Cross moved to approve the settlement negotiation strategy proposed by Allan Payne with regard to current subrogation activities. Mr. Peterson seconded the motion. **The motion was unanimously approved.**

Presiding Officer Johnston introduced the matter of renewal of Allan Payne's contract through June 30, 2006. Mr. Schumacher moved to extend Mr. Payne's contract, as drafted, through June 2006. Mr. Cross seconded the motion. **The motion was unanimously approved.**

Eligibility – Town Pump – Dillon – FacID #01-08695, Release #4144

The next item of business concerned the eligibility application for Town Pump Dillon. The matter concerns a 24-Hour notice violation on an unusual operating condition. The applicable laws & rules should reference §75-11-308(1)(b) and (1)(e), 2001 Montana Code Annotated, ARM 17.58.326 and ARM 17.56.502 effective November 23, 1989 through June 29, 2004. These laws and rules were in effect at the time the release was discovered.

Mr. Wadsworth summarized alarm events that occurred at the facility, as noted in the Executive Summary. The summary consisted of a sequential ordering of the facts that existed in the release files. Following the summary, he provided an explanation of what the Board staff believes caused the repeated triggering of the alarms at both the dispenser islands and the supply tanks, over the several days between December 8, 2002 and late-afternoon December 12, 2002, when the release was called in to the Department of Environmental Quality (DEQ).

Mr. Peterson asked if the alarms were a result of equipment malfunction or actual release alarms.

Mr. Wadsworth responded that the files indicated the alarms were not the result of a malfunction, but rather that the sensors were detecting the presence of petroleum, an unusual operating condition that would indicate an actual release may have occurred.

Presiding Officer Johnston asked if the presence of fuel in the various sumps constituted a release. Mr. Wadsworth responded that it did not constitute a release to the environment, but when the product escaped the sump and entered the environment it became a release. He continued by noting that the applicable legal standard required the owner/operator to call in a suspected release within 24 hours. The alarms and presence of fuel in the sumps would be considered an unusual operating condition warranting Department notification.

Mr. Cross asked how much time elapsed between the fuel exceeding the capacity of the sump at the premium tank and the call to the DEQ.

Mr. Wadsworth responded that the files have no evidence of when the release to the environment at the premium tank sump occurred. The records indicate when the alarms went off, and when the service representative was at the site and

pumped out the sumps at the dispenser island. The files do not indicate precisely when the sump at the premium tank was over capacity. The files do indicate that the service representative did not check the sumps at the supply tanks until two days later, when the alarms had gone off repeatedly.

Mr. Noble clarified that the release was of diesel fuel, even though it was discovered at the premium tank. The files indicate that the contaminant found in the environment near the premium tank sump was diesel fuel, which appeared to have migrated through the annulus of the double wall piping into the premium tank sump.

Mr. Peters asked whether the alarm sounding indicates there has been a release, or that there is a potential problem, unless it is fixed.

Mr. Wadsworth responded that if an alarm sounds and a check of the system indicates the alarm was a result of an equipment malfunction, no call to DEQ is required, if the defect is immediately repaired, recalibrated or replaced and additional monitoring does not confirm the initial result. However, if the alarm sounds and there is no evidence of equipment malfunction it would be considered a clear indication that a release may have occurred, and it must be called in to DEQ within 24 hours.

Mr. Wadsworth asked Mr. Trombetta if he would expound on the discussion. Mike Trombetta, Chief, Hazardous Waste Site Cleanup Bureau, informed the Board that there are two reporting requirements relevant to this matter: the requirement to report an actual release, such as when contamination is found in the soil or there are high chemistry results, and the requirement to report a suspected release, as in the case of unusual operating conditions, such as alarms going off or unexplained fuel losses from a supply tank.

Mr. Manson asked what conditions, in this case, the Department considered indicate a suspected release. Mr. Trombetta responded that if an alarm goes off and fuel is found in a sump, those conditions would indicate a suspected release. In this case, that event occurred at 4:30 p.m. on December 10, 2002.

Presiding Officer Johnston asked if Town Pump wanted to address the Board.

Mark Staples represented Town Pump. He provided a handout, "*Applicant's Response to Executive Summary and Staff Recommendation*" to each Board member and stated that his response was based on the citations to authority in the 2003 Montana Code Annotated (MCA), as listed in the Executive Summary, while earlier in the meeting the citations were amended to refer to different provisions in the 2001 MCA. The release occurred in December 2002, and eligibility was applied for in December 2003. The 2003 statute does not contain the 24-hour rule provision that is being used to deny eligibility. He argued that the 24-hour rule was stricken by the 2003 Legislature and is not applicable. As with the prior case concerning Cross Petroleum, the eligibility application was filed after passage of the 2003 statute, and therefore that statute should apply, not the 2001 statute. He believes the site is eligible because the release was called in within 24-hours of actual knowledge of the release, as shown by the tank inventory sheets. The sounding of alarms does not constitute knowledge of a release. There is no reference in statute to the need to report a suspected release. He requested that the Board reject the staff's recommendation.

Presiding Officer Johnston also asked for clarification of the "suspected release" reference. Mr. Johnson, Board's counsel, stated that the Board's statute (75-11-308(1)(b), (e) MCA, (2001)), requires notification to the Department in accordance with the Department's rule (ARM 17.56.502). That rule requires notification to the Department within 24 hours when monitoring results from a release detection method indicate unusual operating conditions or that a release may have occurred. He indicated that not only had the alarms sounded several times over the period of several days, there was knowledge that fuel had been released into the sumps on December 10, and the manifestation of fuel in the sumps was not called in until the afternoon of December 12.

There was extensive discussion between the members of the Board, Mr. Wadsworth, Mr. Staples, and Mr. William Rule (Underground Storage Tank Section) on matters relating to the circumstances at the site. It was noted that the facility had been operational for approximately one week prior to the first sounding of the alarms. Unusual operating conditions, among other things, constitute a suspected release, and the presence of diesel in the environment would be considered a release, both of which require Department notification. Pressure testing of the system would not have detected the faulty component, since the pump was separate from the pressure-tested section of the system. The sequence of events in the matter indicates a suspected release, since fuel was found in the sumps and secondary containment system. The total capacity of the sumps was not known. The volume of fuel the sumps could contain before the fuel was released to the environment would be a function of the configuration of the secondary containment and associated elevations of the sumps, making it difficult to determine the precise time when the diesel entered the environment.

Presiding Officer Johnston summarized the multiple alarms and product in the sumps indicating a suspected release, the applicable statute and rules requiring notification of a suspected release, and asked for a motion to approve the recommendation by staff.

Mr. Noble moved to accept the Board staff's recommendation to deny eligibility. Mr. Schumacher seconded. Mr. Noble, Mr. Peterson, Mr. Schumacher and Presiding Officer Johnston voted in favor of the motion. Mr. Cross and Mr. Manson voted in opposition to the motion. **The motion was approved.**

Eligibility – Rocky Mountain Supply – Dillon – FacID #01-10034, Release #4366

Mr. Wadsworth indicated that the question in this matter was whether the co-pay applies. Originally, it appeared the release involved single-wall and double-wall tank systems. The staff had conflicting information concerning the construction of the components of the tank system. Further investigation revealed that the piping in the system is single-wall and the tanks are double-wall. Because the piping was single wall, the system is, by definition, a single wall system, so the copay of \$17,500 applies. The owner has been notified of the staff's determination that the system be considered a single-wall system and that the co-pay applies. **No Board action was required.**

Eligibility – Christensen Residence – Big Arm – FacID #24-03225, Release #4375

Mr. Wadsworth provided a summary of the matter. The initial staff recommendation was that the site be ineligible, because it was a heating oil tank not removed before 1995 and did not qualify under ARM 17.58.312. The Board's counsel reviewed the facts and notified the staff that there is a conflict between the applicable statute and ARM 17.58.312. The staff is now recommending that the Board grant eligibility to the release because the tank is eligible under statute, while the rule is too broad and not consistent with statute. In addition, the staff would like the Board to discuss the conflict between the rule and the statute at the next Board meeting.

Mr. Johnson provided clarification of the applicable rule, ARM 17.58.312. That rule establishes minimum eligibility criteria for tank eligibility. In 1995 the Legislature changed the definition of underground storage tank and removed heating oil tanks with underground piping from regulatory control of the Department. The Board tried to remove those tanks from the program because they were no longer controlled by regulation. The rule the Board put in place is too broad and not consistent with statute. If the Board wishes to remove above ground heating oil tanks with underground piping from eligibility for the fund, a change to the rule must be drafted.

Presiding Officer Johnston asked for a motion. Mr. Cross moved to make the release eligible. Mr. Manson seconded. **The motion was unanimously approved.**

Mr. Johnson suggested the Board instruct the staff to prepare an amendment to the rule to correct the inconsistency. Mr. Cross moved to instruct the staff to prepare an amendment to ARM 17.58.312. Mr. Manson seconded. **The motion was unanimously approved**

Eligibility Ratification

Mr. Wadsworth informed the Board of the eligibilities received since the last Board meeting. He noted that the Board had voted to determine the Christensen residence to be eligible for the Fund earlier in the meeting, changing the table provided to the Board. (See table below). Mr. Manson moved to ratify the eligibility determinations as presented by the Board staff, with the exception of the Christensen residence, ratified earlier. Mr. Noble seconded. **The motion was approved.**

Board Staff Recommendations Pertaining to Eligibility From November 22, 2004 thru January 11, 2005				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Billings	Edwards Jet Center	56-03656	Voluntary Registration	Two of the three tanks are potentially eligible. One tank lacks 12 months of ATG records. 11/22/04
Butte	Vogue Cleaners, Inc	47-03757	4368 Aug 2004	Eligible – Tanks were closed in place in 1988

Table continued . . .

Ronan	Former Gordon Granly Property	24-12921	4356 Mar 2004	Eligible – Tanks were removed in 1970's 12/7/04
Townsend	Visocan Petroleum	04-03467	4342 May 2004	Eligible – No reported violations 12-7-04
Bozeman	The Store Inc	16-06596	4345 July 2004	Eligible – No reported violations 12-8-04
Poplar	Former Triple Supply	43-11218	312 Mar 1990	Eligible – No reported violations 12-13-04
Great Falls	Former Sinclair	07-01873	4361 Sep 2004	Eligible – No reported violations 12-15-04
Chinook	Jamieson Motors, Inc	03-00035	3019 Mar 1990	Eligible – No reported violations 12-21-04
Whitefish	Franks Conoco	15-01676	4315 Oct 2003	Eligible – No reported violations 12-30-04
Butte	Sinclair Station 25003	47-02089	4367 Sep 2004	Eligible – No reported violations 12-30-04
Big Arm	Christensen Residence	24-03225	4375 Oct 2004	Ineligible – Residential underground heating oil tank 12-30-04 – ELIGIBLE
Butte	J.B. McBride Distributor, Inc	47-03207	4373 Oct 2004	Eligible – ASTs with aboveground piping – No reported violations 1-3-05
Bonner	MT DNRC	56-14096	4376 Nov 2004	Eligible – No reported violations 1-5-05
Miles City	Flying J Travel Plaza	09-08661	4365 Oct 1999	Eligible – No reported violations 1-10-05
Dillon	Rocky Mountain Supply, Inc	01-10034	4366 Sept 2004	Eligible – No reported violations 1-12-05
Dillon	Town Pump	01-08695	4144 Dec 2002	Ineligible – Not reporting suspected release

Claims over \$25,000

Mr. Wadsworth presented the Board with the claims for amounts greater than \$25,000 since the last Board meeting (See table below). There were two claims totaling \$99,962.08. Both claims were for soil excavation. Mr. Cross moved to approve the claims over \$25,000. Mr. Manson seconded. **The motion was unanimously approved.**

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Reimbursed
Glasgow	Anderson Oil	53-06093	20041210E	\$87,275.00	\$83,787.15 Co-payment met with this claim
Whitefish	Franks Conoco	15-01676	20041223A	\$39,133.17	\$16,174.93
Total					\$99,962.08

Weekly Reimbursements

Mr. Wadsworth presented the Board with the summary of weekly claim reimbursements for Board ratification (See table below). There were 226 claims, totaling \$626,110.77.

Mr. Wadsworth also pointed out that there are two claims with zero reimbursement in the packet: Yellowstone County Road Department (release ineligible) and N & H Transportation (work not approved by the Department).

Presiding Officer Johnston requested an explanation of the fact that several of the claims were for monitoring well installation, even though the releases were discovered several years ago.

Mr. Wadsworth, confirmed by Mr. Trombetta, noted that sometimes a release is discovered and determined to be a low priority site, so monitoring wells are not installed until the release priority moves up the list.

Mr. Schumacher moved to approve the weekly claims reimbursements for the weeks of December 01, 2004 through January 12, 2005. Mr. Noble seconded. **The motion was approved unanimously.**

<u>WEEKLY CLAIM REIMBURSEMENTS</u> <u>JANUARY 31, 2005 BOARD MEETING</u>		
<u>Week of</u>	<u>Number of Claims</u>	<u>Funds Reimbursed</u>
December 1, 2004	49	\$104,831.09
December 8, 2004	27	\$74,036.04
December 15, 2004	27	\$83,431.64
December 22, 2004	11	\$91,921.95
December 29, 2004	57	\$87,131.87
January 5, 2005	10	\$90,391.33
January 12, 2005	45	\$94,366.85
Total	226	\$626,110.77

Board Ratification of the Proposed Budget

Mr. Wadsworth introduced the 2006-2007 Biennial Budget item. Presiding Officer Johnston noted that the Board will be ratifying the budget that was presented by the Department and approved by the Legislature and Governor's office

Mr. Wadsworth made note that the budget has currently gone through the Appropriations Subcommittee, and will be brought before the House Appropriations Committee for approval.

Sandi Olsen, Remediation Division Administrator gave a summary of expenses, as had been requested by the Board at the last meeting. She gave a detailed explanation of the components of the rental item in the budget. She also provided some information on the backlog of releases the Department is working with, and noted that the backlog is a significant reason the budget is not declining as rapidly as the Board would like to see. She also stated that the Subcommittee approved the grant match coming from the Petro Fund rather than another fund.

Presiding Officer Johnston stated that the Board had hoped that item would be eliminated from the Fund's budget. He then asked if there was any potential that the grant match might be reimbursed to the Petro Fund from another fund.

Ms. Olsen said she did not know of any way that would happen.

Presiding Officer Johnston asked Mr. Johnson if the Board had authority to allow the funds from the Petro Fund to be used for the grant match.

Mr. Johnson said he would have to do some research.

Ms. Olsen stated that the statute requires that the Fund can be used for regulatory purposes and requires the Department to share the budget with the Board.

Mr. Noble moved to ratify the proposed budget for fiscal years 2006 and 2007. Mr. Manson seconded. **The motion was unanimously approved.**

Mr. Wadsworth asked if the Board wanted to discuss the matter of Fund use for the LUST grant further. Presiding Officer Johnston indicated that the matter is closed for the moment, and no further discussion was necessary.

Retaining Owner/Operator Involvement in the Cleanup Process – Discussion Item

Presiding Officer Johnston noted that this item had been introduced at the last Board meeting. Once the \$17,500 co-payment has been met by the owner/operator, much of the time that person has no further interest in the costs associated

with clean-up and is no longer involved. In an effort to keep costs down, the Board is looking at keeping the owner/operator involved as in interested party in the process.

Mr. Wadsworth explained that several options have been proposed for further discussion: requiring the owner/operator to sign each claim before it is submitted; requiring the owner/operator to pay 10% of all claims submitted to the Board (this option would require a rule or statute change); the minimum amount allowed for a claim could be raised; or a combination of any of those three. Discussions with the Department resulted in the suggestion to require the owner/operator to pay specific costs, such as well closure costs.

Mr. Cross stated that most owners/operators are not involved in the remediation process, and do not have a grasp of the total costs of a remediation effort, because their obligation ends once they have paid the \$17,500 co-pay. He feels very strongly that owners/operators must be responsible to monitor the costs of cleaning up the messes on their own property.

At 12:18 pm Presiding Officer called for a 10-minute break.

The meeting recommenced at 12:28 pm.

The discussion of methods to keep the owner/operator involved in the cleanup continued. Presiding Officer Johnston suggested that, if the owner/operator must sign the claims, there either be a *de minimus* amount required for the signature, or raise the minimum amount required to file a claim.

Alan Stine, Olympus Technical Services, suggested requiring the owner/operator to approve the work plans.

Mr. Noble suggested that Montana should develop a risk-based program similar to the one Idaho runs. That may require changes to water quality regulations or to statutes.

Mr. Trombetta indicated that the Department does look at risks now, but closure is based on statutes. DEQ can't close a site unless it qualifies under the statutes. If a site is low risk, costs can be reduced to the point where only one well is tested every three years.

Presiding Officer Johnston tabled any further discussion on the matter to the next Board meeting. Mr. Wadsworth will prepare a synopsis of the options for the Board members to consider.

Consultants' Meeting

Mr. Wadsworth reported to the Board concerning the Consultants' Meeting held January 6, 2005. He gave a summary of matters the Board staff presented to the consultants, including the revised Claim for Reimbursement Form (Form 3), the proposed standard Corrective Action Task Names, proposed legislation for the 2005 Legislature (Senate Bill 145) and recent rule changes ARM 17.58.326 and 17.58.311 (converting from the Uniform Fire Code to the NFPA 1). He also gave a brief summary of matters the Department presented to the consultants, including standardizing of reports and work plans and rule changes the PRS section is promulgating. The consultants recommended that the next meeting be held after the 2005 Legislative Session, and had no suggestions for topics of concern to be discussed at the next meeting.

Fiscal Report

Mr. Wadsworth presented the Board with the current Fiscal Report. He noted that the fiscal year-end cash balance is anticipated to be approximately \$400,000 less than the beginning cash balance. He noted that cash receipts from MDT fees came in slightly below the amounts projected.

Presiding Officer Johnston noted that, if the projections are correct, the Fund will end the year with approximately \$288,000 less income than expenses.

Board Attorney Report

Paul Johnson, attorney for the Board, informed the Board that the report before them is accurate as to the status of the cases listed (See table below). In addition, he provided a synopsis of the history of the M&H Gas case. He noted that the judgment was not appealed, making it a final judgment in favor of the Board.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #03138	Eligibility 11/25/97	Dismissal Pending because cleanup of release completed
Thompson Falls	Feed and Fuel	45-02633 Release #03545	Eligibility	Case was stayed on 10/21/99
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Helena	Allen's Oil Bulk Plant	25-01025 Release #02893	Eligibility 11/29/99	Case was stayed on 1/21/00
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage
Helena	Noon's #438	25-03918 Release #03980	Eligibility 2/19/02	Case stayed
Wolf Point	Isle Oil Co	43-08893	3 claim adjustments 12/21/02	Hearing stayed
Belt	Mary Catherine Castner	07-12039	Eligibility 11/22/02	Mar 12, 2003 stayed for up to one year.
Great Falls	M & H Gas	07-01057	Eligibility	Judgment entered in favor of board, final. No appeal.

Board Staff Report

Mr. Wadsworth presented the Board with the staff report. He noted that a list of work plan costs estimates reviewed has been added to the packet provided to the Board. Board staff reviewed the data and no apparent correlation between the work plans approved and the volume of claims received by the staff has been identified.

Presiding Officer Johnston expressed appreciation for the additional information, as it will provide additional detail on the Board's contingent liability.

Petroleum Release Section Activity Report

Mike Trombetta presented the Petroleum Release Activity Report. He gave a summary of activity for the entire calendar year 2004. At the end of 2004 there were 1588 active releases. During the year there were 56 new releases, and 47 releases resolved. He noted that 2004 was the first year the Petroleum Release Section had applied for a Brownfields Grant from the US Environmental Protection Agency. If PRS receives the grant, it will come during the next biennium. It will not affect expenditures from the fund very much, but is a matter of interest. He indicated that Brownfields money must be used on low priority sites.

He gave a summary of types and causes of releases. The biggest cause for releases continues to be human error, such as spills and over-fills. He also indicated that there are currently 455 releases that DEQ cannot address at this time, due to manpower. Each Project Officer currently handles approximately 100 sites.

Presiding Officer Johnston asked for a clarification of the Fund's liability under Brownfields as a result of recently proposed changes to the potentially responsible party portion of the federal program. Mr. Trombetta indicated he would gather some further information to present at the next Board meeting.

Case Study

Presiding Officer Johnston has asked the Department to present a case study of a leak site at the next several meetings in order to assist the Board members and the public in understanding how the Department handles such sites, what the costs are and how the project will move forward. The site chosen for presentation at this meeting was Jody's Conoco in Glasgow.

Public Forum

There were no comments from the public.

Mr. Cross moved to adjourn the meeting.

Meeting adjourned at 1:30 p.m.

Barry Johnston